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18
19 *Attorneys for Defendants*
20 FUJITSU LIMITED, and
21 FUJITSU MICROELECTRONICS AMERICA, INC.

22 IN THE UNITED STATES DISTRICT COURT

23 DISTRICT OF GUAM

24 NANYA TECHNOLOGY CORP. and
25 NANYA TECHNOLOGY CORP. U.S.A.,

26 CIVIL CASE NO. 06-CV-00025

27 Plaintiff,

28 vs.
29 FUJITSU LIMITED, FUJITSU
30 MICROELECTRONICS AMERICA, INC.,
31
32 Defendants.

33 NON-AGREEMENT OF HEARING
34 DATE FOR FMA'S MOTION TO
35 COMPEL IMMEDIATE
36 SUBSTANTIVE RESPONSES TO
37 FMA'S JURISDICTIONAL
38 DISCOVERY REQUESTS

42
43 FILED
44

45 DISTRICT COURT OF GUAM

46 MAY - 2 2007 10

47 MARY L.M. MORAN
48 CLERK OF COURT

1 Pursuant to Local Rule 7.1, the parties hereby acknowledge the following:

2 1. I, Daniel M. Benjamin, am an attorney for the Defendant Fujistu

3 Microelectronics America ("FMA") in this matter.

4 2. The attorney for Plaintiffs is Joseph C. Razzano.

5 3. FMA has filed a motion to compel substantive responses to its

6 jurisdictional discovery requests that it served upon Plaintiffs in this matter. (See Docket Nos.

7 228 & 229). This motion was filed in the form of a stipulation under Local Rule 37.1, and thus

8 briefing on it should be complete. (See L.R. 37.1; *see also* Docket No. 215 at 6 ("If such a

9 stipulation is filed, further briefing would likely be unnecessary, and the Court could set a hearing

10 on the discovery dispute as early as possible, or could quickly issue a ruling based on what is

11 presented in the stipulation.")).

12 4. The L.R. 37.1 stipulation indicates that oral argument is "contested."

13 FMA's position is that no argument is necessary on the matter, as the motion to compel ultimately

14 boils down to a question of whether Plaintiffs are obligated to respond to FMA's jurisdictional

15 discovery at this juncture.

16 5. In their communications with FMA's counsel, Plaintiffs have indicated

17 their intent to request a hearing and possibly further briefing to defend their position that

18 "[j]urisdictional discovery is one-sided." (See Exs. A & B, attached hereto). FMA has indicated

19 it opposes this request and views it as causing unnecessary delay. (See Ex. B).

20 6. On Monday, April 30, 2007, I spoke to Mr. Razzano and indicated that if

21 Plaintiffs sought argument, they should obtain a hearing date from the Court, and file a notice of

22 non-agreement of hearing date. FMA filed the L.R. 37-1 stipulation regarding its motion to

23 compel at the beginning of the day on Tuesday, May 1, 2007. However, as of the time of

24 execution of this Non-Agreement, Plaintiffs have yet to file a Non-Agreement of Hearing Date.

25 7. For the reasons indicated in its portion of the L.R. 37-1 stipulation, FMA

26 believes it is urgent that its motion to compel be resolved as expeditiously as possible so that, if it

27 is granted, FMA receives responses to its discovery in time to use such responses in its upcoming

28 briefing on its Motion to Dismiss. Accordingly, rather than risk any further delay, FMA has

1 proceeded to file this Non-Agreement of Hearing Date, stating its belief that no hearing is
2 necessary and that the matter is now ripe for disposition. Alternatively, if the Court deems a
3 hearing necessary, FMA asks that such hearing be set as soon as the Court's schedule permits,
4 given the urgency of the situation and that briefing is complete under L.R. 37-1.

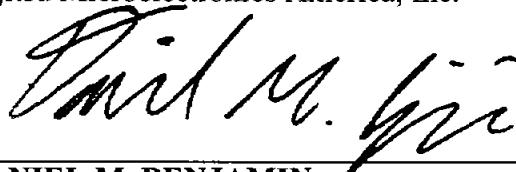
5 Respectfully submitted this 2nd day of May, 2007.

6 **CALVO & CLARK, LLP**
7 **MILBANK, TWEED, HADLEY**
& MCCLOY LLP

8 *Attorneys for Defendants*

9 Fujitsu Limited and

Fujitsu Microelectronics America, Inc.



10 By:

11 DANIEL M. BENJAMIN

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EXHIBIT A

From: Michael Shore [mailto:michaelwshore@yahoo.com]
Sent: Monday, April 30, 2007 9:35 AM
To: Kass, Lawrence; Alfonso G Chan
Cc: Chalsen, Christopher; Murray, Michael; Browand, Nathaniel; R Jacob; D Benjamin; Michael Shore; Joseph Razzano; junpingco@ualawguam.com; Martin Pascual; Ruth Lee; Abby Golman; Kumar Vinnakota; Vance Freeman; Kenneth Shore; Jeff Bragalone; Joseph DePumpo; Michael Shore; mwolcott@shorewestfreeman.com; jbarrett@shorewestfreeman.com; Chalsen, Christopher; Murray, Michael
Subject: Re: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's jurisdictional discovery requests.

We do not agree to forego oral argument. Alfonso will address the other issues. Jurisdictional discovery is one-sided because it is you who deny it.

----- Original Message -----

From: "Kass, Lawrence" <LKass@milbank.com>
To: Alfonso G Chan <achan@ShoreChan.com>
Cc: "Chalsen, Christopher" <CChalsen@milbank.com>; "Murray, Michael" <MMurray@milbank.com>; "Browand, Nathaniel" <NBrowand@milbank.com>; R Jacob <rjacobs@calvoclar.com>; D Benjamin <dbenjamin@calvoclar.com>; Michael Shore <mshore@ShoreChan.com>; Joseph Razzano <jrazzano@tttguamlawyers.com>; junpingco@ualawguam.com; Martin Pascual <mpascual@ShoreChan.com>; Ruth Lee <rlee@ShoreChan.com>; Abby Golman <agolman@ShoreChan.com>; Kumar Vinnakota <kvinnakota@ShoreChan.com>; Vance Freeman <Vfreeman@shorewestfreeman.com>; Kenneth Shore <KShore@shorewestfreeman.com>; Jeff Bragalone <jbragalone@ShoreChan.com>; Joseph DePumpo <jdepumpo@ShoreChan.com>; Michael Shore <mshore@ShoreChan.com>; mwolcott@shorewestfreeman.com; jbarrett@shorewestfreeman.com; "Chalsen, Christopher" <CChalsen@milbank.com>; "Murray, Michael" <MMurray@milbank.com>
Sent: Sunday, April 29, 2007 5:26:31 PM

Subject: RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's jurisdictional discovery requests.

Alfonso:

Attached is the current version of the L.R. 37.1(b) stipulation regarding FMA's motion to compel immediate substantive responses to FMA's jurisdictional discovery requests. This includes both parties' contributions. It also includes the following revisions:

- (a) slight substantive revisions (see highlighted text);
- (b) FMA's general contentions have been moved to a separate section at the top to conform with Plaintiffs' preference to do the same (as opposed to putting them all under the first discovery request at issue);
- (c) Plaintiffs' Responses & Objections have been added as exhibits I-K, and consequently the February Stipulation and the Discovery Plan have been redesignated as exhibits L and M.

No hearing is necessary because the main issue is narrow, i.e., whether the Court intended mutual or one-sided jurisdictional discovery during the period at issue. Accordingly, we have also revised the caption to say "No Oral Argument Requested". If Plaintiffs insist on requesting a hearing, then FMA will oppose and ask that any hearing (if granted) be conducted by phone early this week.

We will plan on filing these on Monday (Guam time) unless we hear from you to the contrary.

Very truly yours,
Larry Kass

<<2007-04-29 Stipulation re FMA's Motion to Compel Substantive Responses to FMAs Jurisdictional Discovery Requests.doc>>

EXHIBIT B

RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's juris... Page 1 of 11

From: Kass, Lawrence [mailto:LKass@milbank.com]

Sent: Monday, April 30, 2007 12:22 PM

To: Alfonso G Chan

Cc: Chalsen, Christopher; Murray, Michael; Browand, Nathaniel; R Jacob; D Benjamin; Michael Shore; Joseph Razzano; junpingco@ualawguam.com; Martin Pascual; Ruth Lee; Abby Golman; Kumar Vinnakota; Vance Freeman; Kenneth Shore; Jeff Bragalone; Joseph DePumpo; Michael Shore; mwolcott@shorewestfreeman.com; jbarrett@shorewestfreeman.com; Chalsen, Christopher; Murray, Michael

Subject: RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's jurisdictional discovery requests.

Alfonso:

We will revise to say "Oral Argument Contested."

FMA of course reserves all rights in all circumstances unless expressly waived. But please be advised that it will resist any attempt by Plaintiffs to moot this urgent issue by dragging it out with unnecessary briefing and/or hearing.

With respect to signing and filing, Dan Benjamin's office will obtain Joe Razzano's signature (per Joe's email of a few minutes ago) and then file the stipulation.

Very truly yours,
Larry Kass

From: Alfonso G Chan [<mailto:achan@ShoreChan.com>]

Sent: Sunday, April 29, 2007 9:28 PM

RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's juris... Page 2 of 11

To: Kass, Lawrence

Cc: Chalsen, Christopher; Murray, Michael; Browand, Nathaniel; R Jacob; D Benjamin; Michael Shore; Joseph Razzano; jupingco@ualawguam.com; Martin Pascual; Ruth Lee; Abby Golman; Kumar Vinnakota; Vance Freeman; Kenneth Shore; Jeff Bragalone; Joseph DePumpo; Michael Shore; mwolcott@shorewestfreeman.com; jbarrett@shorewestfreeman.com; Chalsen, Christopher; Murray, Michael

Subject: RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's jurisdictional discovery requests.

Larry:

As mentioned in our telephone conference last week and referenced in my following emails, Plaintiffs believe that oral argument is absolutely necessary. The issues raised by your motion to compel are at least as complex as the issues raised during the prior live discovery hearings, especially considering that you have propounded at least 101 distinct discovery requests, each having different scope and raising different issues. Accordingly, Plaintiffs do not agree with denominating the stipulation with the words "No Oral Argument Requested." It should more accurately be denominated "Oral Argument Contested."

Plaintiffs also reserve the right to file a response brief in accordance with the local rules and assert additional legal and factual bases to support their position in said response and during oral argument. Please confirm whether Defendants similarly reserve such rights.

Consistent with the request in my 12:57 pm email of today, please send us a signed version of the stipulation or inform us whether Mr. Benjamin will handle such formalities for Defendants.

Sincerely,
Alfonso

From: Kass, Lawrence [mailto:LKass@milbank.com]

Sent: Sun 4/29/2007 5:26 PM

To: Alfonso G Chan

Cc: Chalsen, Christopher; Murray, Michael; Browand, Nathaniel; R Jacob; D Benjamin; Michael Shore; Joseph Razzano; jupingco@ualawguam.com; Martin Pascual; Ruth Lee; Abby Golman; Kumar Vinnakota; Vance Freeman; Kenneth Shore; Jeff Bragalone; Joseph DePumpo; Michael Shore; mwolcott@shorewestfreeman.com; jbarrett@shorewestfreeman.com; Chalsen, Christopher; Murray, Michael

Subject: RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's jurisdictional discovery requests.

Alfonso:

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- (a) slight substantive revisions (see highlighted text);

RE: NANYA v. FUJITSU - FMA's revised L.R. 37.1(b) stip re Nanya's objections to FMA's juris... Page 3 of 11

(b) FMA's general contentions have been moved to a separate section at the top to conform with Plaintiffs' preference to do the same (as opposed to putting them all under the first discovery request at issue);

(c) Plaintiffs' Responses & Objections have been added as exhibits I-K, and consequently the February Stipulation and the Discovery Plan have been redesignated as exhibits L and M.

No hearing is necessary because the main issue is narrow, i.e., whether the Court intended mutual or one-sided jurisdictional discovery during the period at issue. Accordingly, we have also revised the caption to say "No Oral Argument Requested". If Plaintiffs insist on requesting a hearing, then FMA will oppose and ask that any hearing (if granted) be conducted by phone early this week.

We will plan on filing these on Monday (Guam time) unless we hear from you to the contrary.

Very truly yours,
Larry Kass

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